UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,453	12/12/2003	Chris Lacombe	2277.02	9685

7590 05/20/2005

TED M. ANTHONY
PERRET DOISE, APLC
Suite 1200
600 Jefferson Street
Lafayette, LA 70501

EXAMINER	
HAYES, BRET C	
ART UNIT	**PAPER NUMBER**
3644	

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/734,453	LACOMBE ET AL.	
	Examiner	Art Unit	
	Bret C Hayes	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 March 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 6-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 6-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

EA

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1 and 6 – 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 recites the limitation "said container" in line 8. There is insufficient antecedent basis for this limitation in the claim. This was originally rejected as the second of three (3X) instances and, therefore, does not constitute a new rejection. For example, the original rejection stated the recitation of "said container" appeared in lines 5, 6 and 8 (3X). The "(3X)" referred to the number of instances.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,589,341 to Clark et al. (as cited by Applicants).

6. Clark et al. discloses the claimed invention including a method for suppressing a blast from an explosive device comprising:

a) positioning a containment structure having an internal void near said explosive device, wherein said containment structure has an inlet orifice extending from the outer surface of the containment structure into said internal void;

b) connecting a conduit, to said inlet orifice of said containment structure, see col. 5, line 67+, "foam generators may be attached to the chutes"; and

c) injecting flowable foam through said conduit and into said internal void of said containment structure;

d) substantially filling the internal void of said containment structure and covering said explosive device with said containment structure.

7. Clark et al. disclose, as set forth at col. 5, lines 44 – 47, "In a preferred form of the present invention, the confinement barrier is formed by one or more chutes...wherein the chutes are modified such that the delivery end is sealed." (*Emphasis added.*) This meets the claimed limitation of a structure having an internal void.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Alternatively, claim 1, and claims 6 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark et al., as applied above.

10. Re – claim 1, even conceding that Clark et al. do in fact disclose openings directing the foam toward the explosive device, this is not necessarily the only method of deployment. For

example, Clark et al. disclose, as set forth at col. 12, 42 – 58, for example, "a typical system, a double barrier system, as described may be used around the periphery of the structure to be felled in order to suppress the lateral blast effects generated around the structure during demolition. Chutes may be used as well as spaced curtains, foam filled not only to suppress the blast effects, but also to reduce the dust formed during felling. Any of the systems, as described, may be used. From the nature of the operation, however, one alternative is to suspend curtains from the structure to be felled, or to position the curtains from an independent support system, with the region between the curtains filled with foam. Depending upon the particular circumstances, a wide variety of barrier systems may be used. It is important, however, that the foam be contained to perform the function for which it is intended to be used." (*Emphasis added.*). Clearly, Clark et al. contemplate constraining the foam within the chutes or curtains as a necessary alternative, without directing it toward an explosive device at all. In any event, it would have been obvious to one having ordinary skill in the art at the time the invention was made to eliminate the openings, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. *In re Karlson*, 136 USPQ 184. In this case, the function of directing the foam toward the explosive device has little, if any, impact on the overall function of the invention, which is to control an explosive blast using expanded foam. Therefore, eliminating the openings, which direct the foam toward an explosive device would be either: 1) explicit; 2) implied; 3) inherent; or, 4) obvious.

11. Re – claim 6, as set forth in the previous office action, it would be obvious to one of ordinary skill in the art at the time the invention was made to disconnect the conduit from the

orifice of the containment structure. As Applicants have not argued the point, it is considered to be agreed.

12. Re – claim 7, Clark et al. disclose the containment structure being "foldable", as at col. 7, lines 50 & 51, for example.

13. Re – claim 8, Clark et al. disclose the claimed invention including the containment structure being constructed from "lightweight plastic", as at col. 5, line 48, for example. However, Clark et al. do not disclose the structure being constructed from 3-mil visquine plastic sheeting. Visquine (or visqueen) by any other name is polyethylene plastic sheeting. While Clark et al. do not disclose the claimed 3 mil thickness, it is a well known and widely available thickness of lightweight plastic, which Clark et al. do in fact disclose. In light of that, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select 3 mil visquine, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Response to Arguments

14. Applicant's arguments with respect to claims 1 and 6 – 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571)272 – 7045. The fax number is (703) 872 – 9306.

bh

5/16/05

MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER